

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ROBERT JAMES FOX,

Petitioner,

VS.

WILLIAM STEPHENS,

Respondent.

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CIVIL ACTION NO. 4:13-CV-1880

OPINION ON DISMISSAL

The above-styled action was filed as a petition for a writ of habeas corpus. However, instead of challenging the fact or duration of his confinement, Petitioner's pleading asserts various civil rights claims.¹ Because a favorable judgment on Petitioner's claims would not necessarily imply the invalidity of his conviction or sentence, he must present his claims via a civil rights complaint under 42 U.S.C. §1983. *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005) (noting that if a "favorable determination" would not automatically entitle the prisoner to an accelerated release, the proper vehicle is a § 1983 suit).

Moreover, under 28 U.S.C. § 1915(g), a prisoner cannot file a civil action *in forma pauperis* in federal court if, on three or more prior occasions, while incarcerated, he brought an action that was dismissed for being frivolous, malicious, or failing to state a claim upon which relief may be granted. The only exception to this revocation of an inmate's privilege to proceed *in forma pauperis* is if he is in immediate danger of serious physical harm. *Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

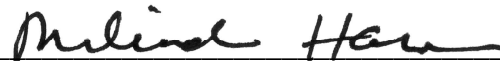
¹ Petitioner alleges a number of constitutional violations while stating that "the free exercise of religion is the ONLY ISSUE" (Docket No. 1 at 2.)

The present suit is clearly subject to the three-strikes bar under Section 1915(g) because Petitioner does not indicate that he is in any danger and his litigation history reveals that he has previously filed numerous frivolous cases in the federal courts. *See Fox v. Gardner*, No. 3:04-cv-2498 (N.D. Tex.) (Docket No. 16, entered March 2, 2005) (noting Fox's designation as a "vexatious litigant" based on a "pattern of frivolous lawsuits").

Accordingly, it is ORDERED that this complaint is DISMISSED under 28 U.S.C. § 1915(g) without prejudice to refile as a civil rights suit with payment of the entire \$400.00 filing fee. Any pending motions are further DENIED.

The Clerk will provide copies of this Order to Petitioner, the TDCJ-Office of the General Counsel, P.O. Box 13084, Capitol Station, Austin, TX 78711, Fax 512-936-2159, and the Clerk of the United States District Court for the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas, 75702, Attention: Three-Strikes List Manager.

SIGNED at Houston, Texas, this 6th day of February, 2014.

A handwritten signature in black ink, appearing to read "Melinda Harmon", is written over a horizontal line.

MELINDA HARMON
UNITED STATES DISTRICT JUDGE